

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ALLAN A. WRIGHT,

Petitioner,

Case No. 04-CV-73558-DT
HONORABLE AVERN COHN

v.

JERI ANN SHERRY,

Respondent.

ORDER GRANTING PETITIONER'S MOTION TO PROCEED IN FORMA PAUPERIS
AND
DENYING MOTION FOR A CERTIFICATE OF APPEALABILITY

I.

This is a habeas case under 28 U.S.C. § 2254. Petitioner Allan A. Wright, (Petitioner), a state prisoner, filed a *pro se* petition for writ of habeas corpus claiming that he is incarcerated in violation of his constitutional rights. The Court considered his claims on the merits and denied the petition. See Opinion and Order Denying Petition for Writ of Habeas Corpus, filed April 4, 2006.

Petitioner seeks to appeal the Court's decision and also moved for leave to proceed in forma pauperis on appeal. Petitioner's request for in forma pauperis status is GRANTED. See Fed. R. App. 24(a).

II.

Before Petitioner can appeal the Court's decision of April 4, 2006, a certificate of appealability (COA) must issue. See 28 U.S.C. § 2253(c)(1) and Fed. R. App. P. 22(b). A COA may be issued "only if the applicant has made a substantial showing of the

denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). In Slack v. McDaniel, 529 U.S. 473, 120 S. Ct. 1595 (2000), the United States Supreme Court held that where, as here, a petition is rejected on the merits, “the petitioner must demonstrate that reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong.” 120 S. Ct. at 1604. The Supreme Court has also explained that “[t]his threshold inquiry does not require full consideration of the factual or legal bases adduced in support of the claims.” Miller-El v. Cockrell, 123 S.Ct. 1029, 1039 (2003). “A prisoner seeking a COA must prove ‘something more than the absence of frivolity’ ‘or the existence of mere good faith on his or her part.’” A prisoner need not prove that “some jurists would grant the petition for habeas corpus a claim can be debatable even though every jurist of reason might agree, after the COA has been granted and the case has received full consideration, that petitioner will not prevail.” Id. at 1040.

In this Circuit, the Court must make an individualized determination of each claim raised in the petition in considering whether or not to grant a COA. See Murphy v. State of Ohio, 263 F.3d 466 (6th Cir. 2001) (per curiam). Moreover, where a Petitioner files a notice of appeal, the Court must issue a order granting or denying a COA. Castro v. United States, 310 F.3d 900 (6th Cir. 2002) (per curiam).

III.

] Petitioner raised three habeas claims, the first two of which pertained to his guilty plea. Petitioner claimed that there was no factual basis for his plea and that there was indications Petitioner was not competent to enter a guilty plea. The Court considered his claims and explained that there is no federal constitutional requirement that a factual basis be established for a guilty plea - what is required is that the plea be knowing and

voluntary. As such, Petitioner was not entitled to relief on this claim. The Court also explained that Petitioner provided no evidence that he was incompetent or show that the trial court's factual finding that Petitioner was competent was incorrect.

Petitioner's last claim pertained to the use of a prior felony conviction as a sentence enhancement. The Court noted that Petitioner failed to object at sentencing to the use of the prior conviction and even if there was error, it was harmless in light of the fact that Petitioner's sentence was within the guidelines range.

Having carefully reviewed Petitioner's motion for a COA, the Court finds that for all the reasons stated in the April 4, 2006 decision, reasonable jurists would not debate the Court's conclusion that Petitioner is not entitled to habeas relief on any of his claims. Accordingly, Petitioner's motion for a COA is DENIED.

SO ORDERED.

s/Avern Cohn
AVERN COHN
UNITED STATES DISTRICT JUDGE

Dated: April 26, 2006

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, April 26, 2006, by electronic and/or ordinary mail.

s/Julie Owens
Case Manager
(313) 234-5160